

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MANN, HUNDLEY AND HENDRICKS

and

Case 5--CA--21547

LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA, LOCAL UNION 1012,  
AFL--CIO AFFILIATED WITH FEDERAL  
PUBLIC SERVICE EMPLOYEE DISTRICT  
COUNCIL 37

*July 17, 1991*  
DECISION AND ORDER

*By Chairman Stephens and Members Concraft and Randerhough*  
Upon a charge filed by the Union on October 30, 1990, the General Counsel

of the National Labor Relations Board issued a complaint against Mann, Hundley and Hendricks, the Respondent, alleging that it has violated Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 1, 1991, the General Counsel filed a Motion for Summary Judgment. On March 15, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by certified letter, dated December 21, 1990, notified the Respondent that the time for filing an answer had been extended to January 5, 1991, and that unless an answer was received by January 5, 1991, a Motion for Summary Judgment would be filed. To date, no answer has been filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## Findings of Fact

## I. Jurisdiction

The Respondent, a Virginia corporation, with an office in Norfolk, Virginia, provides janitorial services for the United States Government at various facilities, including the Dover Air Force Base, Dover, Delaware, where in the last 12 months it received gross revenues in excess of \$50,000 for janitorial services provided, and in the same period purchased and received at its Norfolk, Virginia facility products, goods, and materials valued in excess of \$5000 directly from outside Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

### A. The Unit

All janitorial and maintenance employees employed by the Employer at its Dover Air Force Base facility in Dover, Delaware, excluding supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since on or about December 12, 1989, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the employees in the unit and has been recognized as such by the Respondent, such recognition being embodied in a collective-bargaining agreement between the Respondent and the Union, effective by its terms from February 1, 1990, to February 28, 1992.

### B. The Refusal to Bargain

Since about May 1, 1990, the Respondent has failed to continue in full force and effect all the terms of the collective-bargaining agreement, by failing and refusing to pay contractually established wage increases; by failing and refusing to pay contractually established contributions to the health and welfare fund; and by failing and refusing to remit, or timely remit, authorized dues and initiation fees to the Union. The Respondent engaged in above conduct without prior notice to the Union and without affording it an opportunity to bargain about such matters, and without its consent. We find that by this conduct the Respondent has refused to bargain in violation of Section 8(a)(5) and (1), as explained by Section 8(d) of the Act.

### Conclusion of Law

By failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreement between the parties by failing and refusing to pay contractually established wage increases; by failing and refusing to pay contractually established contributions to the

health and welfare fund; and by failing and refusing to remit and/or timely remit authorized dues and initiation fees to the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 8(d), and Section 2(6) and (7) of the Act.

#### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to bargain with the Union by complying with the terms of the agreement and by continuing in full force and effect all the terms and conditions of the collective-bargaining agreement. We shall also order the Respondent to make whole the unit employees by payment to them of all contractually required wage increases owed them, in the manner prescribed in Ogle Protection Service, 183 NLRB 682, 683 (1970). We shall further order the Respondent to make the employees whole by payment of all contractually required health and welfare contributions that are due and owing to the Man-U-Service Contract Trust Fund as plan administrator for the applicable health and welfare funds.<sup>1</sup> The employees shall also be reimbursed for any expenses or loss of health or welfare benefits they incurred from the Respondent's failure to make the contractually required health and welfare contributions, in the manner set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). We shall also order the Respondent to remit to the Union all authorized dues and initiation fees. In calculating all backpay sums owed the employees, and in remitting all authorized dues and fees, the

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<sup>1</sup> Any additional amounts owed with respect to the health and welfare fund will be determined in accordance with the procedure set forth in Merryweather Optical Co., 240 NLRB 1213 (1979).

Respondent shall include interest as computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Mann, Hundley and Hendricks, a Virginia corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Laborers' International Union of North America, Local Union 1012, AFL--CIO, affiliated with Federal Public Service Employee District Council 37, the Union, by failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the Union by failing and refusing: to pay contractually established wage increases; to pay contributions to the health and welfare fund; and to remit or timely remit authorized dues and initiation fees to the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to and give full force and effect to all the terms and conditions of its current collective-bargaining agreement with the Union, including, but not limited to, its provisions governing wage increases, contributions to the health and welfare fund, and timely remittance of authorized dues and initiation fees to the Union.

(b) Make whole its employees for any loss of pay they suffered as a result of the Respondent's failure to comply with the collective-bargaining agreement with the Union, and reimburse them for any expenses or loss of

benefits that they incurred from the Respondent's failure to make contractually required payments to the health and welfare fund, in the manner set forth in the remedy section of this decision.

(c) Pay the contractually required health and welfare fund contributions that have become due since May 1, 1990, in the manner set forth in the remedy section of this decision.

(d) Remit to the Union all authorized dues and initiation fees, with interest, as set forth in the remedy section of this decision.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Dover, Delaware, copies of the attached notice marked "'Appendix.'"<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

July 17, 1991

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James M. Stephens, Chairman

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Mary Miller Cracraft, Member

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John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Laborers' International Union of North America, Local Union 1012, AFL--CIO, affiliated with Federal Public Service Employee District Council 37, the Union, by failing to continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the Union by failing and refusing: to pay contractually established wage increases; to pay contributions to the health and welfare fund; and to remit or timely remit authorized dues and initiation fees to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to and give full force and effect to all the terms and conditions of the current collective-bargaining agreement with the Union, including, but not limited to, its provisions governing wage increases, contributions to the health and welfare fund, and timely remittance of authorized dues and initiation fees to the Union.

WE WILL make whole our employees, with interest, for any loss of pay they suffered as a result of our failure to comply with the collective-bargaining agreement with the Union, and reimburse them for any expenses or loss of benefits that they incurred from our failure to make contractually required payments to the health and welfare fund, plus interest.

WE WILL pay the contractually required health and welfare fund contributions that have become due since May 1, 1990.

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WE WILL remit to the Union all authorized dues and initiation fees, with interest.

MANN, HUNDLEY AND HENDRICKS

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 109 Market Place, Fourth Floor, Baltimore, Maryland 21202-4026, Telephone 301--962--2772.